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Appellate Division, Fourth Department - In re Heckl

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SUPREME COURT OF NEW YORK APPELLATE DIVISION, FOURTH DEPARTMENT

In re Heckl[1]

(decided July 18, 2007)

Rosanna E. Heckl and her siblings ("the children") brought an action to have their mother, Aida C., declared incapacitated, and thereby have a court evaluator ("evaluator") appointed to watch over both her and her property.[2] Ultimately, the New York Supreme Court, Erie County, ordered an evaluator to observe and speak to Aida C., the alleged incapacitated person ("AIP").[3] Thereafter, the AIP appealed to the Appellate Division, Fourth Department, which addressed whether the appointment of a court evaluator, pursuant to New York Mental Hygiene Law ("MHL"), violated the AIP's protection against self-incrimination guaranteed by the U.S. Constitution[4] or the New York Constitution,[5] when the information provided to the court evaluator by the AIP may be used against her in a guardianship proceeding. The appellate division affirmed, finding that while statements made to an evaluator may implicate an AIP's liberty interest, they do not give rise to the threat of criminal prosecution, and thus the constitutional protections against self-incrimination do not at-

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[1] 840 N.Y.S.2d 516 (App. Div. 4th Dep't 2007).

[2] *Id.* at 518.

[3] *Id.*

[4] U.S. CONST. amend. V, states, in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

[5] N.Y. CONST. art. I, § 6, states, in pertinent part: "No person shall be . . . compelled in any criminal case to be a witness against himself or herself . . . ."

tach.[6]

Under MHL Section 81.09(a), a court must assign an evaluator to an AIP, following an order to show cause by the party seeking the appointment.[7] Once assigned, the evaluator has two conflicting obligations.[8] Initially, the evaluator must meet and interview the AIP in order to submit an objective report to the court concerning the AIP's needs,[9] including determinations which the AIP may resist or object to, such as the necessity of counsel and assisted living.[10] However, the evaluator must also protect the interests of the AIP, including safeguarding his or her property.[11] Despite these often-competing interests, the MHL contains a lone provision under which AIPs may attempt to remove their evaluators.[12] MHL Section 81.10(g) provides that in the event the court appoints counsel for the AIP, it may "dispense with the appointment of a court evaluator or may vacate or suspend the appointment of a previously appointed court evaluator."[13]

During the initial proceedings, the AIP's children sought a determination by the court, pursuant to MHL Section 81.09, that their mother's mental state left her incapacitated, which therefore required

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[6] *Heckl*, 840 N.Y.S.2d at 520.

[7] MENTAL HYG. LAW § 81.09(a) (McKinney 2004), states: "At the time of the issuance of the order to show cause, the court shall appoint a court evaluator."

[8] *Heckl*, 840 N.Y.S.2d at 519.

[9] MENTAL HYG. LAW § 81.09(c)(1), states: "The duties of the court evaluator shall include the following: meeting, interviewing, and consulting with the person alleged to be incapacitated regarding the proceeding."

[10] *Heckl*, 840 N.Y.S.2d at 520.

[11] MENTAL HYG. LAW § 81.09(e), states, in pertinent part: "The court evaluator shall have the authority to take the steps necessary to preserve the property of the person alleged to be incapacitated . . . ."

[12] *Heckl*, 840 N.Y.S.2d at 520.

[13] MENTAL HYG. LAW § 81.10(g) (McKinney 2004).

a court appointed guardian to monitor her well-being.[14] Specifically, the children claimed that their eighty-year-old mother suffered from dementia, which left her ill-equipped to handle the multiple tasks required of her on a daily basis.[15] These responsibilities not only included taking care of her own personal needs, but also encompassed running Permclip Products Corporation ("Permclip"), for which she was the president and sole shareholder.[16] Additionally, the children feared that their mother was being manipulated and taken advantage of by others due to her fragile condition.[17] However, the relationship between the AIP and her children was undisputedly classified as "estranged," and the AIP claimed that her children were simply acting for self-gain, hoping to realize and control her money and Permclip.[18]

Despite the AIP's claims, the court entered an order on September 20, 2006, granting the order to show cause and assigning an evaluator to the AIP.[19] Following the court's ruling, the AIP moved to vacate the order, claiming that her "liberty interest [was] at stake" and that enforcement of the court's decision would violate her protection against self-incrimination guaranteed by both the U.S. Constitution and the New York Constitution.[20] The AIP reasoned that subjecting her to an evaluator's questioning, and requiring her to answer, would infringe upon her constitutionally protected rights because her

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[14] *Heckl*, 840 N.Y.S.2d at 518.

[15] *Id.* at 519.

[16] *Id.*

[17] *Id.*

[18] *Id.* While the court noted that the family relationship was estranged, it offered no specifics as to the cause, and only mentioned that the reasons are disputed. *Id.*

[19] *Heckl*, 840 N.Y.S.2d at 518.

[20] *Id.*

responses could be introduced into evidence at her guardianship proceeding.[21] In addition, the AIP claimed that since she had retained counsel, the court should dismiss the evaluator pursuant to MHL Section 81.10(g), reasoning that if the court may dismiss an evaluator when an attorney is appointed, then the same rule should apply when the AIP hires her own counsel.[22] However, on November 22, 2006, the court denied the motion and ordered that the evaluator "immediately" meet with the AIP.[23]

Regardless of the court's clear directive, the AIP continued to refuse to speak with the evaluator.[24] In response, the children moved to have their mother found in contempt, and thus face fines or imprisonment for her continued failure to follow the court's orders. On January 24, 2007, the court granted the AIP one last chance to comply by giving her ten days from its entry of an order to meet with the evaluator, after which, failure to comply would result in her being held in contempt.[25] Thereafter, the AIP appealed to the Appellate Division, Fourth Department, which affirmed in part and reversed in part, the lower court's decision.[26] Specifically, the appellate division affirmed the lower court's ruling as to the appointment of the evaluator and found it did not violate the AIP's constitutional rights, but reversed the order of civil contempt that sought to punish the AIP for

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[21] *Id.* at 518-19.
[22] *Id.* at 519.
[23] *Id.* at 518.
[24] *Heckl*, 840 N.Y.S.2d at 518.
[25] *Id.*
[26] *Id.* at 518-19.

failing to meet with the evaluator.[27]

The appellate division did not dispute that the AIP's liberty interests were at stake, stating that "her most basic rights" were undeniably at risk during her guardianship proceeding.[28] However, the court found that the federal and state constitutional protections against self-incrimination did not extend to the AIP's guardianship proceeding.[29] The court noted that even where a liberty interest is at stake " 'the right against self[-]incrimination does not attach in all instances.' "[30] Specifically, the court articulated that the protections against self-incrimination are not implicated in an administrative or civil context, where there is no reasonable apprehension of a criminal prosecution.[31] Therefore, since the AIP was not subject to any foreseeable criminal proceedings, she was not entitled to the federal and state constitutional protection against self-incrimination.[32]

The *Heckl* Court referred to the United States Supreme Court decision of *In re* Gault,[33] which established the degree to which the U.S. Constitution protects the right against self-incrimination. In *Gault*, a minor was taken into police custody after he and another boy allegedly made lewd phone calls to a neighbor.[34] Subsequently, the minor met with the Juvenile Court Judge ("Judge") in his chambers

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[27] *Id.*
[28] *Id.* at 520.
[29] *Heckl*, 840 N.Y.S.2d at 520.
[30] *Id.* (quoting Allen v. Illinois, 478 U.S. 364, 372 (1986)).
[31] *Id.* (citing *Gault*, 387 U.S. 1, 47-48 (1967)).
[32] *Id.*
[33] 387 U.S. at 1.
[34] *Id.* at 4.

to discuss the alleged inappropriate phone calls.[35] The minor was only accompanied by his mother and older brother, neither of whom were informed that the minor was not required to make any statements.[36] In addition, the proceeding was not recorded nor memorialized in any way.[37] Following the meeting, the judge held a hearing to determine the minor's fate.[38] During the hearing, additional testimony was given concerning the minor's statements, which, like the prior meeting, was also not documented.[39] Despite varying accounts of what the minor had said in both hearings, the judge declared that the minor was a delinquent and committed him to the State Industrial School until he reached the age of majority.[40]

Since appeals were not permitted in juvenile cases, a habeas corpus petition was filed claiming that the minor was not afforded his protection against self-incrimination guaranteed by the U.S. Constitution.[41] The petition was heard in the Arizona Superior Court, where the State argued that the Fifth Amendment only provided protection against statements relating to criminal matters, and since juvenile proceedings were considered civil, the protection against self-incrimination did not attach.[42] At the proceeding, the minor's counsel cross-examined the Judge about the circumstances surrounding

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[35] *Id.* at 5.
[36] *Id.* at 5, 43-44.
[37] *Id.* at 5.
[38] *Gault*, 387 U.S. at 6.
[39] *Id.* at 7.
[40] *Id.* at 6-7.
[41] *Id.* at 8-10.
[42] *Id.* at 49.

his questioning of the minor.[43] In explaining his conduct, the Judge provided "vague" reasoning for his decisions concerning his treatment of the minor, however, the court accepted his explanation and subsequently dismissed the writ.[44] Thereafter, the Arizona Supreme Court affirmed the dismissal,[45] and the United States Supreme Court granted certiorari.[46]

The Supreme Court reversed, holding that the protections of the Fifth Amendment cannot be wholly eliminated for a class of individuals, such as juveniles, simply because the State designates the proceeding non-criminal, but rather one must look to the "nature of the statement or admission and the exposure which it invites."[47] The Court articulated that the reasoning behind the Fifth Amendment is to protect a person's liberty interest, and thus one cannot "disregard substance" merely because it involves a non-criminal proceeding.[48] Furthermore, the Court asserted that when someone's liberty interest is violated as a result of being unwillingly incarcerated, the label attached to the proceeding does not alter the significance of that person's interest.[49] In addition, the Court noted that the Fifth Amendment protection against self-incrimination should be construed

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[43] *Gault*, 387 U.S. at 8.

[44] *Id.* at 9. The judge claimed that the minor was " 'habitually involved in immoral matters.' " *Id.* As a basis for his claim, the Judge spoke of an unsubstantiated incident he had heard of two years prior, involving the minor stealing another boy's baseball glove. *Id.* In addition, the judge referred back to the statement made in his chambers where he alleged the minor had admitted to making additional inappropriate phone calls in the past. *Id.*

[45] *Gault*, 387 U.S. at 10.

[46] *Id.*

[47] *Id.* at 49.

[48] *Id.* at 49-50.

[49] *Id.*

broadly, and applied "generously."[50] Therefore, the privilege may be invoked regardless of the type of proceeding so long as the statement "is or may be inculpatory" or where the " 'witness may reasonably apprehend [that the statement] could be used in a criminal prosecution.' "[51]

In contrast, the Court in *Allen v. Illinois*[52] affirmed an Illinois Supreme Court decision that denied a defendant his protection against self-incrimination in a civil proceeding, which threatened to place him in a psychiatric care facility.[53] In *Allen*, the defendant was charged with criminal violations relating to sexual misconduct.[54] Due to the defendant's criminal acts, the State of Illinois ("State") brought a civil action under the Illinois Sexually Dangerous Persons Act ("Act"), to have the defendant declared a sexually dangerous person, and accordingly sent to a psychiatric facility.[55]

In order to comply with the Act, the defendant was required to undergo two psychiatric examinations, which would then be used to help determine whether to send him to the facility.[56] After the completion of the evaluations, the defendant objected to the admissibility of statements he made to the psychiatrists because he claimed it would violate his protection against self-incrimination.[57] In response, the trial court limited the psychiatrists' testimony to their opinions of

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[50] *Gault*, 387 U.S. at 50.

[51] *Id.* at 47-49 (quoting Murphy v. Waterfront Comm'n, 378 U.S. 52, 94 (1964) (White, J., concurring)).

[52] 478 U.S. 364 (1986).

[53] *Id.* at 367-68.

[54] *Id.* at 365.

[55] *Id.* at 366, 369.

[56] *Id.* at 366.

[57] *Allen*, 478 U.S. at 366.

the defendant based on the examinations, and thereby precluded any testimony as to the specific statements made by the defendant.[58] At the conclusion of the trial, the defendant was found to be a sexually dangerous person under the Act, and was therefore required to be admitted into a mental health facility.[59]

Subsequently, the defendant appealed to the Appellate Court of Illinois for the Third District, which reversed, concluding that the defendant was deprived of his Fifth Amendment protection.[60] However, the Supreme Court of Illinois reversed, finding that the defendant's protection against self-incrimination did not attach in a civil proceeding that simply concerned treatment.[61] Thereafter, the United States Supreme Court granted certiorari.[62]

The Court affirmed, holding that in a non-criminal proceeding where treatment rather than punishment is the ultimate objective, the defendant is not afforded protection against self-incrimination under the Fifth Amendment.[63] Although the Court asserted that labeling a proceeding something other than criminal is not dispositive of whether the Fifth Amendment may be invoked, it stated that in non-criminal proceedings a defendant must provide " 'the clearest of proof' that 'the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention.' "[64] In determining whether the defendant satisfied this test, the Court relied on two key points

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[58] *Id.*
[59] *Id.* at 367.
[60] *Id.*
[61] *Id.*
[62] *Allen*, 478 U.S. at 368.
[63] *Id.* at 369-70.
[64] *Id.* at 369 (quoting United States v. Ward, 448 U.S. 242, 248-49 (1980)).

that distinguish *Allen* from the Court's decision in *Gault*.[65] Initially, the Court stated that the proposition outlined in *Gault*, declaring that the protections of the Fifth Amendment are invoked whenever one's liberty interests are at stake, is "plainly not good law."[66] Moreover, the Court articulated that the threat of confinement in and of itself does not operate as a shield, which automatically affords a person Fifth Amendment protections, but rather it is simply one factor to be considered.[67] The second distinction the Court addressed was the different purposes between the Act at issue and the statute in *Gault*.[68] While both cases involved non-criminal proceedings, the Court emphasized that the purpose behind the statute in *Gault* was to punish, while the intent behind the Act was to treat sexually dangerous persons.[69] The Court reasoned that " ' [t]he state has a legitimate interest . . . in providing care to its citizens who are unable . . . to care for themselves.' "[70] Therefore, absent a showing that the purpose behind an individual's threatened confinement conforms with that of someone facing criminal charges, the Act is outside the scope of the protections of the Fifth Amendment.[71]

Although the court in *Heckl*, much like the Court in *Allen*, interpreted the protection against self-incrimination narrowly, in *In re* United Health Services Hospitals Inc.,[72] the New York Supreme

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[65] *Id.* at 372.
[66] *Id.*
[67] *Allen*, 478 U.S. at 372.
[68] *Id.* at 373.
[69] *Id.*
[70] *Id.* (quoting Addington v. Texas, 441 U.S. 418, 426 (1979)).
[71] *Id.* at 373.
[72] 785 N.Y.S.2d 313 (Sup. Ct. Broome County 2004).

Court found that AIPs retain their federal and state constitutional protections during guardianship proceedings.[73] In *United Health* an AIP was called to the stand at his own guardianship proceeding and was asked to testify about his condition.[74] The AIP's attorney objected, arguing that since the AIP's liberty interest was at stake he could not be forced to testify against himself under the U.S. Constitution and the New York Constitution.[75]

On appeal, the New York Supreme Court, Broome County, was faced with virtually the identical issue the appellate division faced in *Heckl*: whether AIPs can be compelled to answer questions concerning matters that will directly affect their liberty interest. The court held that AIPs could not be denied their constitutional protection in a proceeding where their most fundamental liberty interests are at stake simply because it involves a non-criminal proceeding.[76]

As a case of first impression in New York, the court drew upon the Supreme Court's decision in *Gault*. The court asserted that the deprivation of liberty faced by juveniles, such as the minor in *Gault*, is no greater than what is at stake for AIPs at a guardianship proceeding, and therefore AIPs should be afforded the same constitutional protections.[77] The court noted that both juveniles and AIPs are subject to incarceration against their will, and with AIPs, the guardian may even have the power to make decisions affecting life or death.[78]

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[73] *Id.* at 317.
[74] *Id.* at 313.
[75] *Id.*
[76] *Id.* at 316-17.
[77] *United Health*, 785 N.Y.S.2d at 316-17.
[78] *Id.* at 316. The court, when talking about life and death decisions, was referring to the power of a guardian to "withhold or withdraw life sustaining treatment." *Id.* (citing MENTAL

Also, the court affirmatively addressed the limited holding in *Allen*, finding that " 'there is a threat of self-incrimination whenever there is a deprivation of liberty'; and there is such a deprivation whatever the name of the institution, if a person is held against his will.' "[79] In addition, the court mentioned that the Court of Appeals has plainly stated that an individual's civil rights remain intact where loss of liberty is at stake.[80] Furthermore, the court asserted that the "leading treatise on guardianship in New York" makes clear that there is no support for the proposition that AIPs are without their protection against self-incrimination at guardianship proceedings.[81] The court determined, therefore, that it is "inherently offensive to our Constitution" to force AIPs to testify at a guardian proceeding where their answers may be used to strip their liberty interests away.[82]

Prior to *United Health*, the Appellate Division, Third Department, in *In re* Ashley,[83] held that a father's right against self-incrimination was not violated when he was sent to prison for refusing to admit to sexually abusing his daughter during court ordered treatment.[84] In *Ashley*, the family court found that a father had been

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HYG. LAW § 81.29(e) (McKinney 2004))).

[79] *United Health*, 785 N.Y.S.2d at 314 (quoting McNeil v. Patuxent Institution, 478 U.S.245, 257 (1986) (Douglas, J., concurring)). However, the court acknowledged that not every state has followed the principles set forth in Justice Douglas' opinion. *Id.* at 314. The court referred to a case decided by the Oregon Appellate Court, which found that a mentally ill person was not entitled to protection against self-incrimination at a proceeding determining his committal to an institution. *Id.* (citing *In re* Matthews, 613 P.2d 88 (Or. 1980)).

[80] *Id.* at 315 (citing Rivers v. Katz, 495 N.E.2d 337 (N.Y. 1986)).

[81] *Id.* at 315. (citing ROBERT ABRAMS, GUARDIANSHIP PROCEEDINGS IN NEW YORK STATE 583-585 (New York State Bar Association 1997)).

[82] *United Health*, 785 N.Y.S.2d at 317.

[83] 683 N.Y.S.2d 304 (App. Div. 3d Dep't 1998).

[84] *Id.* at 304-05.

sexually abusing his child.[85] As a result, the father was required to enter, and successfully complete, a treatment program for sexual offenders where he had a variety of obligations.[86] Although the father complied with the majority of the treatment's requirements, such as mandatory attendance and completing assignments, he failed to admit that he was responsible for sexually abusing his daughter.[87] Since the treatment program's success hinges on the patient accepting accountability for his actions, the father was released from the program.[88] Thereafter, the family court found that the father had failed to comply with the order of disposition, and as a result he was sentenced to six-months in jail.[89]

The father appealed the ruling, claiming that he failed to admit sexually abusing his daughter because of his right against self-incrimination guaranteed by both the New York Constitution and the U.S. Constitution.[90] The appellate division held that while the protection against self-incrimination may be invoked in family court proceedings, one may only do so when he or she is faced with a "substantial and real danger of criminal prosecution."[91] The court distinguished the father's situation from that of someone faced with a "real danger of criminal prosecution" by noting that the father was in treatment rather than on the stand, and therefore the questioning about the abuse to his daughter was done in a therapeutic setting

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[85] *Id.* at 305 n.2.
[86] *Id.* at 304.
[87] *Id.*
[88] *Ashley*, 683 N.Y.S.2d at 304.
[89] *Id.* at 304-05.
[90] *Id.* at 305.
[91] *Id.*

which would not give rise to a "reasonable fear" of criminal prosecution.[92]

The Fifth Amendment, contained in the U.S. Constitution and replicated in the New York Constitution, is an individual right of this nation's citizens to be free from being forced to testify against oneself.[93] This right represents the founding fathers' belief that a nation's populace must be afforded protection from their government.[94]

The text of the Fifth Amendment, however, limits the right against self-incrimination to criminal proceedings.[95] Therefore, the Supreme Court has tried to determine who exactly comes within the protection of the Fifth Amendment, leading to inconsistent interpretations and confusion among the lower courts. The Court's earlier decision in *Gault*, provided a broad interpretation of the Fifth Amendment, one that is more concerned about the rights at stake for the individual in a particular case, rather than the label attached to that particular proceeding.[96] However, the Court's later decision in *Allen* takes a more narrow interpretation of the Fifth Amendment by shifting the focus of the inquiry from an individuals' liberty interest, which the Court relied upon in *Gault*, and instead applied a more stringent interpretation of "criminal proceedings."[97]

The more pragmatic approach applied in *Gault* allowed the Court to look beyond the fact that the case was a non-criminal pro-

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92 *Id.*
93 *See* U.S. CONST. amend. V; N.Y. CONST. art. I, § 6.
94 *Allen*, 478 U.S. at 383 (Stevens, J., dissenting).
95 *See* U.S. CONST. amend. V.
96 *Gault*, 387 U.S. at 50.
97 *Allen*, 478 U.S. at 369.

ceeding, and instead enabled it to focus on the consequences facing the juvenile when he was forced to give up his Fifth Amendment right; thus resulting in the Court upholding the juvenile's right against self-incrimination.[98] However, the more formalistic approach taken in *Allen* led the Court to deny the protections of the Fifth Amendment in a proceeding that threatened to place the defendant in a psychiatric facility, because the Court determined that the purpose of the incarceration was therapeutic rather than punitive.[99] This narrower approach does not seem to be in line with the purpose of the Fifth Amendment, which the framers crafted to create an equilibrium between the government and its citizens by increasing the strength of the latter while decreasing the strength of the former.[100] This was based on the idea that the individual is vulnerable compared to the State and allowing the State to use its power to coerce its citizens into incriminating themselves would deprive them of their freedom.[101]

In keeping with the framer's intent, an AIP is in an even greater position of need for the protections of the Fifth Amendment than that of the average citizen. An AIP stands to lose not only his or her freedom, but may even lose the power to decide whether to live or die.[102] In addition to these serious consequences, it must also be considered that the subject of the guardianship proceeding is alleged to be incapacitated, theoretically making he or she even more vulnerable to coercion than an ordinary criminal defendant. The Court in

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[98] *Gault*, 387 U.S. at 49.
[99] *Allen*, 478 U.S. at 369-70.
[100] *Gault*, 387 U.S. at 47.
[101] *Id.*
[102] *United Health*, 785 N.Y.S.2d at 316.

Gault made a similar distinction in allowing the Fifth Amendment to apply in a juvenile proceeding; "[i]t would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children."[103] The Court's "surprise" stems from what it believed to be a central purpose to the privilege against self-incrimination, "prevent[ing] the state, . . . by force or by psychological domination, from overcoming the mind . . . of the person under investigation."[104] Therefore, the mind of a child, much like the mind of someone with questionable mental capacity, is even more vulnerable to this type of "psychological domination."

While the court in *United Health*, used this line of thinking to uphold an AIP's privilege against self-incrimination, the court in *Heckl* refused to do so.[105] Instead, the court in *Heckl* used the more formalistic approach utilized by the Court in *Allen*, finding that despite the undisputed implication of the AIP's liberty interest, she was not protected by the Fifth Amendment's prohibition on self-incrimination because her testimony would not subject her to any foreseeable criminal prosecutions.[106] However, despite the court in *Heckl* finding that the AIP was not entitled to these protections, it nevertheless held, without much explanation, that she could not be forced to meet with the evaluator.[107] Initially this would seem like a success for the AIP, who is alleviated from having to talk to the evaluator, and thus seemingly victorious in securing that her testi-

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[103] *Gault*, 387 U.S. at 47.
[104] *Id.*
[105] *See United Health*, 785 N.Y.S.2d at 316-17; *Heckl*, 840 N.Y.S.2d at 520.
[106] *Heckl*, 840 N.Y.S.2d at 520.
[107] *Id.* at 521.

mony will not be used against her. The court's decision, however, cannot be read as a victory for the AIP. In making its determination, the court stated that while it cannot force the AIP to speak with the evaluator, her failure to do so would only make it more likely that she would be found incapacitated; thereby leaving her liberty even more at risk.[108] In other words, the court is leaving the AIP with two unattractive choices: either speak to the evaluator and risk having those statements used against her; or refuse to speak and thereby forgo having an independent evaluation of her condition, which would significantly hamper her liberty interest.

The decision in *Heckl* is therefore a curious one; the court spends the majority of the opinion explaining that the AIP is not protected from meeting with the evaluator based on Fifth Amendment grounds, yet holds, through some ambiguous language that the AIP cannot be forced to talk to the evaluator. This holding, however, does little to help quell the concerns of AIPs, since talking to the evaluator or refusing to talk to an evaluator will be used against the AIP, and therefore it fails to secure essential rights for a vulnerable class of citizens who undoubtedly need protection.

Michael Prisco

[108] *Id.*